



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160630573-6999-02]

RIN 0648-BG19

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management
Measures**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Amendment 45 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council) (Amendment 45). This final rule extends the 3-year sunset provision for the Gulf of Mexico (Gulf) red snapper recreational sector separation measures for an additional 5 years. Additionally, this rule corrects an error in the Gulf red snapper recreational accountability measures (AMs). The purpose of this final rule is to extend the sector separation measures to allow the Council more time to consider and possibly develop

alternative management strategies within the Gulf red snapper recreational sector.

DATES: This final rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Amendment 45, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at *http://sero.nmfs.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone: 727-824-5305; email: *Peter.Hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes red snapper, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 25, 2016, NMFS published a notice of availability for Amendment 45 and requested public comment (81 FR 58466). On September 8, 2016, NMFS published a proposed rule for Amendment 45 and requested public comment (81 FR 62069). The proposed rule and Amendment 45 outline the rationale for the action contained

in this final rule. A summary of the management measures described in Amendment 45 and implemented by this final rule is provided below.

Management Measure Contained in This Proposed Rule

Amendment 45 extends the 3-year sunset provision implemented through the final rule for Amendment 40 to the FMP (80 FR 22422, April 22, 2015) for an additional 5 years. Amendment 40 established distinct private angling and Federal for-hire (charter vessel and headboat) components of the Gulf reef fish recreational sector fishing for red snapper, and allocated red snapper resources between these recreational components. The purpose of establishing these separate recreational components was to provide a basis for increasing the stability for the for-hire component and the flexibility in future management of the recreational sector, and to reduce the likelihood of recreational red snapper quota overruns, which could jeopardize the rebuilding of the red snapper stock (the Gulf red snapper stock is currently overfished and is under a rebuilding plan). As a result of the stock status, the actions in Amendment 40 were also intended to prevent overfishing while achieving optimum yield, particularly with respect to recreational fishing opportunities, and while rebuilding the red snapper stock.

Amendment 40 defined the Federal for-hire component as including operators of vessels with Federal charter vessel/headboat permits for Gulf reef fish and their angler clients. The private angling component was defined as including anglers fishing from private vessels and state-permitted for-hire vessels. Amendment 40 also established accountability measures for the Gulf red snapper recreational components. In addition, Amendment 40 applied a 3-year sunset provision for the regulations implemented through its final rule. The sunset provision maintained the measures for sector separation through the end of the 2017 fishing year, ending on December 31, 2017.

This final rule extends Gulf recreational red snapper sector separation through the end of the 2022 fishing year, ending on December 31, 2022, rather than the current sunset date of December 31, 2017. Beginning on January 1, 2023, the red snapper recreational sector will be managed as a single entity without the separate Federal for-hire and private angling components. The Council would need to take further action for these recreational components and management measures to extend beyond the 5-year extension in Amendment 45.

Additionally, as a result of extending the sunset provision for sector separation, this final rule extends the respective red snapper recreational component quotas and ACTs through the

2022 fishing year, instead of through the 2017 fishing year as implemented through Amendment 40.

Comments and Responses

A total of 115 comments were received on the notice of availability and proposed rule for Amendment 45. Most of the comments (91 comments), including one from a recreational fishing organization, were not in favor of extending the sunset provision from Amendment 40. The primary reason given was an opposition to sector separation implemented through Amendment 40, including: the concern that sector separation was unfair to private anglers, particularly with respect to fishing season length in Federal waters; the position that all recreational fishermen, regardless of whether they use a private vessel or a for-hire vessel to harvest red snapper, should be managed under the same regulations; and opposition to any part of the recreational quota being privatized. These comments are duplicative of those provided on Amendment 40 and were addressed in the final rule implementing Amendment 40 (80 FR 22422, April 22, 2015). Those responses to comments are incorporated here by reference.

Other comments in opposition to Amendment 45 and the proposed rule expressed a preference for recreational red snapper fishing to be managed by the Gulf states or managed

through the use of fish tags, or expressed opposition to the Federal for-hire component being managed under a catch share program in the future. These comments are outside the scope of Amendment 45. Amendment 45 only addresses extending Amendment 40's sunset provision, not the strategies or measures under which the separate components of the recreational sector may be managed.

Fifteen comments were received in favor of extending the sunset provision. Rationale in support included: that extending the sunset provides more time to develop Federal for-hire red snapper management measures, and that sector separation is providing a longer Federal season for operators of federally permitted for-hire reef fish vessels. Eight comments did not indicate whether they were for or against extending the sunset provision and one comment from a Federal agency indicated they had no comments on Amendment 45 or the proposed rule.

Comment 1: The Council, when approving Amendment 40, established a 3-year sunset provision to ensure that the Council would evaluate the merits of sector separation within a specific time period. Extending sector separation now, before the Council has evaluated sector separation, violates the Council's intent to consider the merits of sector separation over the 3-year evaluation period.

Response: NMFS disagrees. As stated in the final rule for Amendment 40 (80 FR 22422, April 22, 2015), the purpose of separating the recreational sector into components was to provide a basis for increased flexibility in future management of the recreational sector and reduce the likelihood of recreational quota overruns, which could negatively impact the rebuilding of the red snapper stock. As described in Amendment 40, the Council established the 3-year sunset provision to encourage timely action to implement and evaluate alternative management structures. If such structures were under development, the Council also would have the opportunity to determine whether to extend sector separation to continue to develop those structures or instead to let sector separation end under the sunset provision.

The Council is working toward developing alternative management structures and will continue to evaluate sector separation as these structures develop. In view of its work on those structures, chose to extend the sunset provision to continue that work. Amendment 40 represented the first step toward developing alternative structures to manage the recreational sector. Since Amendment 40 was implemented, the Council has established three *ad hoc* advisory panels (APs) to help it develop management alternatives for recreational red

snapper management in the Gulf. The Ad Hoc Red Snapper Charter For-hire AP and the Ad Hoc Reef Fish Headboat AP have convened on several occasions and are assisting the Council in developing management actions for their respective fishing modes. The Council also recently established the Ad Hoc Red Snapper Private Angler AP, which it charged with providing recommendations on private recreational red snapper management measures that would provide more quality access to the red snapper resource in Federal waters, reduce discards, and improve fisheries data collection. This AP has yet to meet.

Although the Council is making progress in its efforts to develop alternative red snapper recreational management measures, it is unlikely that the Council, with help from its APs, will approve any management measures prior to January 1, 2018, when Amendment 40 expires under the current sunset provision. Therefore, the Council decided to take action through Amendment 45 to extend the sunset provision for an additional 5-year period to give it additional time to develop the future red snapper management measures contemplated under Amendment 40. Extending the sunset provision in this final rule is consistent with the intent behind including the sunset provision in Amendment 40 as it provides the Council with additional time to develop alternative management structures and to continue to

consider the merits of sector separation over an additional 5 years. Because of the time it would take to develop and implement an amendment to extend the sunset time period, rather than waiting any longer into the sunset period, the Council chose to act now to extend sector separation for an additional 5 years, and its action is consistent with the intent in including the sunset provision in Amendment 40.

Comment 2: Sector separation should not be extended for an additional 5 years because sector separation disproportionately harms private anglers by reducing the length of their Federal season; unreasonably creates a different set of rules for each recreational component fishing under the same recreational quota; is not based on the best scientific information available; creates derby-like conditions for the private angler component; allows the privatization of a portion of the recreational quota; and it is premature to extend sector separation before the litigation concerning sector separation is resolved.

Response: NMFS disagrees. The Council approved Amendment 40 and submitted the amendment to NMFS for review and Secretarial approval. During this process, NMFS received many comments in opposition to sector separation citing the same substantive reasons as those received on Amendment 45 and proposed rule.

Responses to these comments are contained in the final rule for Amendment 40 (80 FR 22422, April 22, 2015) and are incorporated here by reference. In those responses, NMFS explained why it believed sector separation was appropriate. The Council chose to extend sector separation despite the concerns with sector separation itself and NMFS is approving that decision for the same reasons we approved Amendment 40.

With respect to the comment that it is premature to extend sector separation until the litigation concerning sector separation is resolved, NMFS disagrees. The final rule implementing Amendment 40 was challenged in both the United States District Court for the Eastern District of Louisiana, *Coastal Conservation Ass'n v. United States Department of Commerce*, No. 2:15-cv-01300, and in the United States District Court for the Middle District of Florida, *The Fishing Rights Alliance, Inc. v. Pritzker*, No. 8:15-cv-01254. On January 5, 2016, the United States District Court for the Eastern District of Louisiana ruled in favor of NMFS, dismissing the matter with prejudice. That decision is on appeal to the United States Court of Appeals for the Fifth Circuit and oral argument was held on November 1, 2016, *Coastal Conservation Ass'n v. United States Department of Commerce*, No. 16-30137. The other action is still pending. NMFS does not need to await the outcome of these legal

challenges before approving the Council's decision to extend sector separation for an additional 5 years under Amendment 45. Amendment 40 continues to be valid and enforceable until a court rules to the contrary. Depending on the outcome of those challenges, the Council may revisit sector separation, as appropriate.

Additional Changes to Codified Text

On May 1, 2015, NMFS published the final rule for a framework action to revise the Gulf red snapper commercial and recreational quotas and ACTs, including the recreational component ACTs, and to announce the closure dates for the recreational sector components for the 2015 fishing year (80 FR 24832). However, during the implementation of the framework action, the term and regulatory reference for total recreational quota was inadvertently used instead of total recreational ACT when referring to the applicability of the recreational component ACTs after sector separation ends in § 622.41(q)(2)(iii)(B) and (C). This rule corrects this error by revising the text and regulatory references within the component ACTs in § 622.41(q)(2)(iii)(B) and (C) to reference the total recreational sector ACT instead of the total recreational quota.

Classification

The Regional Administrator, Southeast Region, NMFS has

determined that this final rule is consistent with Amendment 45, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No significant issues were received regarding the certification by public comments on the proposed rule, no changes were made to the rule in response to such comments, and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis is not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Quotas, Recreational, Red

snapper.

Dated: November 28, 2016

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.39, revise paragraphs (a)(2)(i)(B) and (C) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(B) *Federal charter vessel/headboat component quota.* The Federal charter vessel/headboat component quota applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational quota, specified in paragraph (a)(2)(i)(A) of this section, will apply to the recreational sector.

(1) For fishing year 2015--2.964 million lb (1.344 million kg), round weight.

(2) For fishing year 2016--3.042 million lb (1.380 million kg), round weight.

(3) For fishing years 2017 through 2022--2.993 million lb (1.358 million kg), round weight.

(C) *Private angling component quota.* The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational quota, specified in paragraph

(a)(2)(i)(A) of this section, will apply to the recreational sector.

(1) For fishing year 2015--4.043 million lb (1.834 million kg), round weight.

(2) For fishing year 2016--4.150 million lb (1.882 million kg), round weight.

(3) For fishing years 2017 through 2022--4.083 million lb (1.852 million kg), round weight.

* * * * *

3. In § 622.41, revise paragraphs (q)(2)(iii)(B) and (C) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(q) * * *

(2) * * *

(iii) * * *

(B) *Federal charter vessel/headboat component ACT.* The Federal charter vessel/headboat component ACT applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT is effective for only the 2015 through 2022

fishing years. For the 2023 and subsequent fishing years, the applicable total recreational ACT, specified in paragraph (q) (2) (iii) (A) of this section, will apply to the recreational sector.

(1) For fishing year 2015--2.371 million lb (1.075 million kg), round weight.

(2) For fishing year 2016--2.434 million lb (1.104 million kg), round weight.

(3) For fishing years 2017 through 2022--2.395 million lb (1.086 million kg), round weight.

(C) *Private angling component ACT.* The private angling component ACT applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational ACT, specified in paragraph (q) (2) (iii) (A) of this section, will apply to the recreational sector.

(1) For fishing year 2015--3.234 million lb (1.467 million kg), round weight.

(2) For fishing year 2016--3.320 million lb (1.506 million

kg), round weight.

(3) For fishing years 2017 through 2022--3.266 million lb
(1.481 million kg), round weight.

[FR Doc. 2016-28905 Filed: 12/1/2016 8:45 am; Publication Date: 12/2/2016]